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No. 569

In the Supreme Court of the United States

OCTOBER TERM, 1929

DAVIES MOTORS, INC., A CORPORATION, CLAIMANT OF ONE WILLYS-KNIGHT ROADSTER AUTOMOBILE, ENGINE #27-260, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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DAVIES MOTORS, INC., A CORPORATION, CLAIMANT OF One Willys-Knight Roadster Automobile, Engine #27-260, petitioner

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MEMORANDUM FOR THE UNITED STATES

The Government does not oppose the petition for certiorari in this case.

The question involved is the same as that in No. 452, *Richbourg Motor Co.* v. *United States,* now pending before this Court on writ of certiorari granted December 2, 1929, namely, whether a proceeding for forfeiture of an automobile used for the illegal transportation of intoxicating liquor must be governed by the provisions of Section 26, Title II, of the National Prohibition Act, if a complaint has been sworn out charging the occupant of the automobile with unlawful possession and transpor-

tation of liquor, or whether under such circumstances the automobile may be proceeded against and forfeited under the provisions of Section 3450, Revised Statutes, for the deposit and concealment therein of intoxicating liquor with intent to defraud the Government of the taxes thereon.

The facts in the two cases are substantially the same. As in the *Richbourg Motor Company case*, there was here a seizure by a Federal prohibition agent of an automobile used in the illegal transportion of liquor and an arrest of the person in charge thereof for transportation and possession in violation of the National Prohibition Act upon a complaint filed before a United States Commissioner. No further proceedings appear to have been taken under that Act. Subsequently, an information was filed charging the person in possession of the car and the liquor with a violation of the criminal provisions of Section 3450, Revised Statutes, to which he pleaded guilty and was fined. A libel against the car seeking its forfeiture under Section 3450, Revised Statutes, was filed on the ground that it had been used in the deposit and concealment of distilled spirits with intent to defraud the Government of the taxes thereon. The petitioner, Davies Motors, Inc., intervened in these proceedings, claiming title to the car under a contract of conditional sale.

In affirming the decree of forfeiture, the court below reviewed the decisions of the Circuit Court of Appeals for the Fourth Circuit in the *Rich-*

bourg Motor Company case and other cases in that Circuit upholding forfeitures under Section 3450 upon a similar state of facts, as well as the decision of the Circuit Court of Appeals for the Fifth Circuit in *United States* v. *General Motors Acceptance Corporation*, 25 F. (2d) 238, where the opposite conclusion was reached, and held that it was disposed to follow the decisions and line of reasoning of the Circuit Court of Appeals for the Fourth Circuit.

In the *Richbourg Motor Company case* the Government contended that the decision was correct, but in view of the conflict of decisions involved, and because the case presented questions constantly arising in the enforcement of prohibition, it did not oppose the petition for certiorari.

As the petition in that case has been granted and the case is now pending before the Court, and since the instant case presents substantially the same facts and involves the same questions, the Government does not oppose the petition.

Respectfully submitted.

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